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To: Dr. E. B. Sanders **Date:** 1990 August 10

From: M. Z. DeBardeleben

Subject: Industry Response to, and Impact of, Anti-Tobacco Legislation in Canada

There are only three cigarette manufacturers in Canada:

Imperial Tobacco Ltd.
RJR-Macdonald
Rothmans-Benson & Hedges

These companies explain the proliferation of anti-tobacco legislation in the country as a direct result of the wide publicity about the alleged effects of environmental tobacco smoke. Apparently Canadians are extremely environmentally conscious and have allowed these policies to encroach on their personal freedoms in the name of environmental protection. However, as early as last summer [Tobacco Reporter, August 1989] it was reported that "there are increasing signs that many Canadians. . .are beginning to react against this particular brand of extremism."

On the other hand, it appears that much of the credit for the anti-tobacco movement in Canada actually belongs to the combined forces of the Nonsmokers' Rights Association and the Canadian Cancer Society. These organizations have decided to play hardball with the tobacco industry, countering every move with their own strategic response. They carefully timed their press releases to coincide with actions by the industry, and their headlines were bold and provocative: WILL TOBACCO INDUSTRY DECEPTION OUTMUSCLE PARLIAMENT? or GANGRENE AND TOBACCO. They accused legislators of collusion with the industry, or of conflict of interest, by scheduling news conferences in the legislators' own districts and suggesting that their constituents question the integrity of their elected representatives. They retained Canada's most prestigious law firm to deliver an opinion on the personal liability of tobacco company executives for failing to warn the public that cigarettes are lethal and addictive. When that opinion stated that, according to Canadian tort, charges of criminal negligence could be filed against the executives, the organizations stood mute for nine months until the day when the tobacco industry was making its case against the proposed Tobacco Products Control Act before the House of Commons. The news headlines then screamed: JAIL TOBACCO BOSSES, GROUP SAYS!

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Source: https://www.industrydocuments.ucsf.edu/docs/lgll0000

The two societies state that their key to success was "the recognition of the hopelessness of the traditional strategies, such as trying to fight the plague of tobacco-induced diseases with sweet reason, gentle persuasion, and endless fund-raising for biological research." [The Washington Monthly, July-August 1990] They instead used advertising and public relations to win the support of the man in the street and lobbying to make allies of the legislators and publishers. The lesson they have taught the world is: "Politicians are sure to hear you when you take your case to the public." Or to put it another way, Kenneth Kyle, a Canadian Cancer Society lobbyist, asked: "Why spend millions on microbiologists and not on lawyers, if the lawyers will be more effective in fighting the tobacco epidemic?" After the passage of the Tobacco Products Control Act, William Neville, the primary lobbyist for the tobacco industry, "grudgingly" revealed what the Canadian antismoking lobby had done: "Clearly one of the. . .successes of the antitobacco lobby was to make this appear to be a health issue, and when that happens that is a difficult area for the industry."

As early as 1984 the Nonsmokers' Rights Association showed its steel when it lost its campaign to prevent the sponsorship of the Canadian Ski Association's team in the national championships by RJR-Macdonald (Export A brand). So much media attention was paid to this issue that the health minister and the minister of fitness and amateur sport adopted a policy whereby for every dollar national sports bodies receive from the tobacco industry they will lose an equal amount from their federal funding.

By the winter of 1987 an extensive campaign to convince leading newspapers to reject tobacco advertisements had resulted in success among five major Ontario dailies, accounting for 20% of the circulation throughout all of Canada. These were shortly joined by The London Free Press and Montreal's Gazette, the former widely read in the tobacco-growing areas of the country and the latter being the largest daily in Eastern Canada. By way of comparison, only eleven American newspapers, mostly small dailies representing 0.6% of daily circulation, have adopted such a policy.

We have looked at the 1988-1990 press relevant to the Canadian situation and can identify the following pieces of legislation. Their passage was given the ultimate boost when the Nonsmokers' Rights Association, using its uncanny timing, began 1988 with an advertisement in Canada's most influential newspaper, The Globe and Mail, featuring a photograph of two friends who would rather have kept their relationship secret: Brian Mulroney, the prime minister, and William Neville, president of the Canadian Tobacco Manufacturers' Council.

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Source: https://www.industrydocuments.ucsf.edu/docs/lgll0000

Legislation

7/88 Tobacco Products Control Act (a single violation carrying a fine of up to $250,000), to be implemented as follows:

1/89 All tobacco advertisement banned from magazines, newspapers, radio, and television (radio and television advertising was voluntarily withdrawn by the manufacturers in 1971); no advertising of Canadian tobacco products in foreign magazines sold in Canada; all tobacco sponsorships must be held under the corporate rather than the brand name of a tobacco product; rebates on tobacco products illegal; no new in-store advertisements; distribution of free samples prohibited; use of tobacco brand names on nontobacco items (mugs, hats, shirts) prohibited

Company defenses against smokers' lawsuits were weakened by disallowing the use of government warnings as a shield from liability "if the companies had known of but failed to disclose particular additional health hazards relevant to the litigation"

1/91 All tobacco advertisements on billboards banned

1/93 All tobacco advertisements in retail stores, including brand-related materials, banned

1/89 164% increase in federal taxes on cigarettes over 1/85 (plus additional provincial taxes)

1/89 Non-smokers' Rights Act, involving:

All smoking banned in federal workplaces; tobacco put under the Hazardous Products Act; smoking severely restricted in buses and other forms of public transportation; except for designated areas, all smoking prohibited in federally regulated workplaces (banks, broadcasting studios, government agencies)

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7/89 Employers required to set aside 75% of space in offices and factories as non-smoking areas

Health warnings must be at the top of billboards and must occupy at least 20% of the space (for billboards erected after this date)

8/89 Smoking prohibited by House of Commons staff and visitors (but not by members of Parliament or their staff)

10/89 Tax increase on fine-cut tobacco for roll-your-own cigarettes

11/89 Unattributed health warnings (4 rotating messages) must cover at least 20% of front and back of cigarette packs:

Smoking reduces life expectancy
Smoking is the major cause of lung cancer
Smoking is a major cause of heart disease
Smoking during pregnancy can harm the baby

1/90 54% increase in federal taxes on cigarettes over 1/89 (plus additional provincial taxes)

1/90 Additional 4 unattributed health warnings (8 rotating messages):

Smoking is addictive[1]
Sidestream smoke can harm non-smokers
Smoking causes lung disease
Smoking causes strokes;

must cover at least 25% of front (in English) and back (in French) of cigarette packs; must be in black and white print; must be at top vs. bottom of package; pack must contain an insert to elaborate on the

[1] This is a "world first." The tobacco industry has successfully defeated all attempts to print this warning on packages in every country where it has been sought, other than in Canada.

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Source: https://www.industrydocuments.ucsf.edu/docs/lgll0000

warnings, and this insert must hinder the removal of the cigarettes by the consumer; the "toxic contents" of tobacco smoke must be listed on the side of the pack; tar and nicotine data listed on the packs must use the ISO method[2] ; CO content must be listed on the side of the pack; fine-cut products for roll-your-own cigarettes must list tar, nicotine, and CO values, even though there is no standard method for determination [All of the above is to be phased in beginning 1/91 with full implementation by 6/91]

7/90 Smoking banned on Canadian airline flights of less than 6-hour duration [originally part of the Non-smokers' Rights Act]

11/90 Cigarettes destined for sale in Ontario must have yellow band on packs stating "Ontario"; all cigarettes made for export must have message on pack, "Only for sale outside Canada"

1/91 Additional value-added tax of 7%

Industry Response

Reactions to the legislation in Canada have been varied. As noted above, there is some hope for the industry in the reported feeling that Canadians are beginning to object to so many infringements. But although the following "reactions" have been documented in the trade press, it does not appear that the tobacco industry has waged an aggressive or innovative war against the growing anti-tobacco sentiment.

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Lawsuits

Imperial Tobacco and RJR-Macdonald have filed a joint suit in the **Superior Court in Quebec** against the Tobacco Products Control Act

[2] The ISO method requires smoking to a shorter butt length, thereby providing greater numbers for tar and nicotine.

Source: https://www.industrydocuments.ucsf.edu/docs/lgll0000

Imperial Tobacco and Rothmans-Benson & Hedges have filed a joint **suit in the Superior Court in Quebec** against the Tobacco Products Control Act

Rothmans-Benson & Hedges has filed a **suit in the Federal Court in Toronto** against the Tobacco Products Control Act

Canadian tobacco farmers have filed a **suit against the federal government** for excessive federal and provincial cigarette taxes

Public Relations

Multi-million dollar campaigns portrayed the tobacco companies as **defenders of the freedom of speech**, even if tobacco products ads were to be directed at children under thirteen ("Children under 13 today, so why not 14, 15, or 16 tomorrow?")

Examples of the **"failed" advertising bans in the Scandinavian** countries were touted[3]

Small shopkeepers were enlisted to write **protests to members of Parliament**; the letters, "some with deliberate typographical errors to create an aura of authenticity," were prepared by the industry for the shopkeepers[4]

A **press event** in Toronto, sponsored by Rothmans and including "recruits" from the arts community, denounced the Tobacco Products Control Act as "potentially dangerous because, **by ending the promotion of tobacco products, it would starve culture and sports**"[5]

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[3] The Canadian Cancer Society reacted to this tactic of the industry by bringing the chairman of the Norwegian Council on Smoking and Health to Ottawa, where he produced evidence that the ban had worked.

[4] A full-page advertisement in the press divulged this tactic to the public, further discrediting the tobacco industry and preventing their use of approximately an additional 800,000 names on their mailing lists.

[5] However, the anti-tobacco forces gathered four times as many artists to speak against tobacco sponsorship.

Source: https://www.industrydocuments.ucsf.edu/docs/lgll0000

Corporate Reorganization

Imperial Tobacco and RJR-Macdonald have **incorporated new companies** under their most popular brand names so that they can continue sponsorships (e.g., duMaurier Ltd.); Rothmans-Benson & Hedges did not have to take this step, for obvious reasons

Rothmans-Benson & Hedges has **closed a manufacturing plant** in Mount Royal, outside of Montreal

Patrick J. Fennell, CEO/president of Rothmans-Benson & Hedges, has publicly stated that **inevitably the 3 manufacturers will become 2;** in 3-5 years Rothmans will **begin to diversify**

All three manufacturers are considering **increasing their sales staff** to promote brands "personally" under the advertising ban

Promotions

Manufacturers began offering discounts to consumers in response to the excessive taxes, and this **retail price discounting** is on the increase[6]

Manufacturers are considering **more brightly-designed, eye-catching packaging** to off-set the 25% required warnings

RJR-Macdonald changed the packaging of its Vantage brand to **match the U.S. packaging,** since 65% of all magazines read in Canada are from the U.S. and they hope to piggyback on U.S. advertising[7]

Imperial Tobacco and Rothmans-Benson & Hedges have decided **not to erect any new billboards,** because of the health-warning requirements;

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[6] Rothmans-Benson & Hedges is being sued over this, since rebates are illegal under the Tobacco Products Control Act. RBH maintains that discounts are not rebates.

[7] Canadian smokers are considered the most brand-loyal of any in the world. There seems to be some, but little serious, concern about Canadians switching to U.S. brands because of products advertised in Canadian-read foreign magazines.

Source: https://www.industrydocuments.ucsf.edu/docs/lgll0000

although RJR-Macdonald said that it would continue to advertise on billboards, it has not erected any new ones either

Introductions

The only new product we can identify is Superoll 200 Number 7 Supercut, a fine-cut roll-your-own product introduced by Rothmans-Benson & Hedges 11/89[1]

Fallout

Rather than reveal **additives** in its cigarettes, **RJR-Macdonald stopped using them**; **Philip Morris stopped shipments** of its cigarettes into Canada

Manufacturers **withheld remittance to the government of increased sales taxes** of 0.50/package in 4/89 until the federal budget was passed in 12/89, allowing the manufacturers to enjoy the interest on almost $630 million

Manufacturers expect that the cost of changing their packaging so frequently to comply with the required warnings will prompt them to **eliminate small or marginal brands** from their product lines

Smuggling has become a booming business, both inter-country and inter-provincial; the resident Indians have also discovered a source of income with **black-market tobacco products**, since they are allowed to purchase without paying the excessive taxes

The **duty-free shops** have become a goldmine for Canadian cigarette manufacturers on both sides of the Canadian/U.S. border; **exports are up**

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[1] We cannot verify this through J. E. Wickham, since he no longer follows the Canadian market.

Source: https://www.industrydocuments.ucsf.edu/docs/lgll0000

The anti-tobacco coalition is now trying to push through legislation requiring **all cigarettes to have generic packaging**; they also are trying to place a **ban on all chewing tobacco**

Decreased sales (down 6.66% in 1989 over 1988) are being attributed by the industry to increased taxes rather than to "changes in the incidence of smoking":

1989	1988
160 brands/extensions	169 brands/extensions
4900 mfg employees	5041 mfg employees

Scandinavian Countries

Of related interest is the effect of the ban on tobacco advertising in Norway, Finland, Denmark, and Sweden. Sweden is a snuff (snus) market; Denmark is a cigar/cigarillo market; Norway is a fine-cut market; Finland is a cigarette market. The tobacco industry in Canada has pointed to these studies to show that advertising bans are not effective. As stated above, the Nonsmokers' Rights Association and Canadian Cancer Society arranged for the health minister from Norway to appear before Parliament to refute these industry claims.

Finland

A ban on the advertisement of tobacco products, along with far-reaching smoking restrictions, was instituted in **1973**. The tobacco products market is **growing**.

Norway

A ban on the advertisement of tobacco products was instituted in **1975**. The market for tobacco products is considered **steady**, with a rise in cigarette demand off-setting a decline in smoking tobacco demand.

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Source: https://www.industrydocuments.ucsf.edu/docs/lgll0000

Denmark

There is very little anti-tobacco legislation in Denmark, with the exception of advertising directed at youth. However, the country has been experiencing a **steady decline** in the consumption of tobacco products.

Sweden

Restrictions on smoking have been in place since **1971**, and an advertising ban is presently planned. With the exception of the fine-cut products, the tobacco market in general has shown a **steady decline.**

Analysts explain the situation in the Scandinavian countries by out-of-sight/out-of-mind, i.e., "the ban on advertising has made the 'enemy' invisible." There are no longer discussions and debates about the effects of tobacco consumption in the press or on the radio or television, with the bans in effect in Finland and Norway for so very many years. And the consumers therefore follow their own minds. However, the theory that advertising does not affect tobacco consumption is not widely held outside the industry, and anti-tobacco factions still point to the decline of consumption in Canada as a direct result of the advertising ban and other restrictions rather than the severe increases in taxation.

cc: Central File

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Source: https://www.industrydocuments.ucsf.edu/docs/lgll0000